



COOPERATIVE BULK HANDLING LTD
ABN 29 256 604 947

Gayfer House, 30 Delhi Street
West Perth, Western Australia 6005
GPO Box L886
Perth, Western Australia 6842

Grower Service Centre
1800 199 083

T + 61 8 9237 9600

F + 61 8 9322 3942

info@cbh.com.au

cbh.com.au

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Mr Matthew Schroder
General Manager
Infrastructure & Transport – Access & Pricing Branch
Australian Competition & Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne VIC 3000

Email to: transport@accc.gov.au

Dear Mr Schroder

Bulk Wheat Port Terminals at the Port of Brisbane - Exemptions under the Port Terminal (Bulk Wheat) Code of Conduct.

CBH Group ("**CBH**") makes this submission in relation to the ACCC's exemption assessment of GrainCorp Operations Limited's ("**GrainCorp**") and Queensland Bulk Terminal's ("**QBT**") bulk wheat terminals at the Port of Brisbane under the Port Terminal (Bulk Wheat) Code of Conduct ("**Code**").

CBH has not exported wheat from the Port of Brisbane for some time and therefore this submission is in relation to specific issues concerning the ACCC's general assessment process for port terminal exemptions, having particular regard to the ACCC's determination dated 25 June 2015 in relation to various Victorian port terminal facilities ("**Victorian ACCC Determination**").

CBH notes that there has been clear evidence in this industry of Bunge, QBT, Newcastle Agri Terminal and Quattro establishing or seeking to establish new grain export terminals. Standard competition theory would suggest that excess capacity, together with actual or threatened entry, would mean it would be very unlikely that the owners of export infrastructure would foreclose or deny access on reasonable terms (or would have the incentive to do so), in these circumstances.

In the Victorian ACCC Determination there was a suggestion that the ACCC was concerned that port terminal operators would favor larger exporters because of their volume at the expense of "smaller" exporters, in being able to obtain capacity (particularly at peak times) at an exempt export port terminal.

In the latest exemption consideration of the Brisbane terminals, the ACCC has raised questions in relation to the legitimate interest of the service provider, but does not examine in any detail what that may mean, and in particular does not raise the concerns mentioned above in the Victorian ACCC Determination.

Given that barriers to entry are not high, and have been shown by actual hard evidence not to be high, the relevant question is whether this important factor among others, imposes sufficient constraints for the ACCC to adopt a light handed form of regulation of these export terminals by granting exemptions under the Code. In particular, having regard to the analysis of the High Court in relation to Part IIIA of the CCA in the Pilbara Infrastructure matter (i.e. the focus on only requiring access if there is an inability to economically duplicate) and the Harper Competition Policy Review's analysis in relation to Part IIIA which focuses on genuinely monopoly bottleneck facilities, CBH believes there are strong grounds for the regulation of access conditions for wheat export terminals to become less invasive.

In these circumstances, the ACCC's analysis of what constitutes the legitimate interest of the grain terminal infrastructure owner (particularly a vertically integrated owner), in CBH's view does not give sufficient weight to the infrastructure owners legitimate rights to efficiently export its own products. CBH also believes the ACCC's analysis does not sufficiently take into account the constraints imposed on infrastructure owners who do wish to provide access to other exporters, and the incentives to meet those customers needs, as in this industry the infrastructure owners will otherwise find that any disaffected exporters/customers will bypass their infrastructure.

While the ACCC in the Victorian ACCC Determination noted it would consider the impact on small exporters, as a practical matter, CBH believes that these "small" exporters are generally multinationals with the global scale, finances and ability to develop their own terminals or export supply chains if they wish to do so in Australia. In these circumstances, the ACCC's concerns as to these smaller exporters being disadvantaged, is likely to be in CBH's view, micro managing export supply tasks and not giving sufficient weight to the

infrastructure owner, in particular vertically integrated exporters, efficiently managing their own exports from their own facility.

In summary, CBH believes that the ACCC should give greater weight/consideration to the legitimate business interests of GrainCorp and QBT in efficiently managing their grain export terminals, in the ACCC's assessment of exemptions under the Code.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a horizontal line.

Richard Codling
Group General Counsel
CBH Group